

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PATRICIA KOSTYSHYN,	§
	§
Defendant Below-	§ No. 456, 2010
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0902010157
Plaintiff Below-	§
Appellee.	§

Submitted: August 16, 2010

Decided: August 30, 2010

Before **BERGER, JACOBS**, and **RIDGELY**, Justices.

**ORDER**

This 30<sup>th</sup> day of August 2010, it appears to the Court that:

(1) On July 22, 2010, the Court received appellant’s “Notice of Appeal from Interlocutory Order.” Attached to appellant’s notice of appeal is a Superior Court form document rejecting a notice of appeal that appellant attempted to file in that court because the filing fee was not included. Appellant had attempted to appeal to the Superior Court from a Court of Common Pleas jury verdict finding appellant guilty of menacing and disorderly conduct.

(2) The Clerk of this Court issued a notice pursuant to Supreme Court Rule 29(b) directing appellant to show cause why the appeal should not be dismissed for this Court's lack of jurisdiction to consider an appeal from the Court of Common Pleas.<sup>1</sup> Appellant filed a response to the notice to show cause on July 29, 2010. She asserts that she was represented by a public defender in the Court of Common Pleas (and, thus, she is indigent) but that her appointed counsel would not file an appeal on her behalf. She contends that the Superior Court's refusal to accept her notice of appeal without prepayment of fees has deprived her, an indigent defendant, of her appeal rights.

(3) The State has filed a reply to appellant's response. The State argues that appellant's appeal fails for three separate reasons. First, this Court has no jurisdiction to hear a direct criminal appeal from the Court of Common Pleas.<sup>2</sup> Second, this Court's jurisdiction in criminal cases is limited to appeals from final judgments.<sup>3</sup> A criminal matter becomes final upon the imposition of sentence, and appellant had not been sentenced at the time she filed her notice of appeal. Finally, the State argues that the

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<sup>1</sup>Del. Const. art. IV, § 11(1)(b).

<sup>2</sup> *Id.*

<sup>3</sup>*Eller v. State*, 531 A.2d 948, 950 (Del. 1987).

sentence ultimately imposed upon appellant fails to meet this Court's jurisdictional threshold for filing a criminal appeal. This Court's constitutional jurisdiction is limited to criminal appeals when the sentence is "imprisonment exceeding one month, or fine exceeding One Hundred Dollars."<sup>4</sup> In appellant's case, the Court of Common Pleas sentenced her on July 23, 2010 on each criminal charge to 30 days at Level V incarceration, to be suspended entirely for probation, plus a \$100 fine. Because the sentence for each conviction fails to meet the jurisdictional threshold, the State contends that appellant's appeal must be dismissed.<sup>5</sup>

(4) We agree with the State's position that this matter must be dismissed because the Court has no jurisdiction either to consider an interlocutory appeal in a criminal case or to consider a criminal appeal directly from the Court of Common Pleas. While we find that it was error for the Superior Court Prothonotary to refuse to accept appellant's notice of

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<sup>4</sup>Del. Const. art. IV, § 11(1)(b).

<sup>5</sup>*Marker v. State*, 450 A.2d 397 (Del. 1982) (holding that individual sentences may not be aggregated in order to meet the jurisdictional threshold).

appeal for docketing in that court for non-prepayment of fees,<sup>6</sup> we nonetheless conclude that the error was harmless because, like this Court, the Superior Court's appellate jurisdiction in criminal matters is limited to cases "in which the sentence shall be imprisonment exceeding one (1) month, or a fine exceeding One Hundred Dollars (\$100.00)."<sup>7</sup> The appellant's sentence fails to meet the Superior Court's jurisdictional threshold and, thus, is not subject to appeal in any court of this state. Consequently, the Court concludes that the within appeal must be dismissed.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 29(b), that the within appeal is DISMISSED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>6</sup> In a companion decision issued by the Court today, we noted in *Kostyshyn v. State*, Del. Supr., No. 455, 2010, Jacobs, J. (Aug. 30, 2010) that the timely filing of a notice of appeal, whether in the Supreme Court or the Superior Court, is mandatory and jurisdictional. Thus, a court clerk may not refuse to docket a notice of appeal as a preliminary matter. Ultimately, whether a notice of appeal is legally sufficient to invoke a court's jurisdiction is a question of law to be determined by a judge after notice to the appellant and an opportunity to be heard. *United States v. Neal*, 774 F.2d 1022, 1023 (10<sup>th</sup> Cir. 1985).

<sup>7</sup>Del. Const. art. IV, § 28.